IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 9118 of 2007(I)

AGAINST THE ORDER DATED / / IN IA.10482/2006 IN OS.50/2006 of I ADDL.M.C.,TRIVANDRUM

.....

PETITIONERS:
----

1. **BABU,S/O.MRUTHUNJAYAN,HOUSE NO.VII/627 SREE GANESH,CHENGAMANADU,ERNAKULAM.**

2. **RADHAKRISHNAN,RESIDING AT KEEZHE VEEDU, THURIVIKKAL P.O.,PULAYANAR KOTTA,TRIVANDRUM.**

3. **MRS.RAJNI W/O.RADHAKRISHNA OF -DO-**

BY ADV. SRI.D.SAJEEV

RESPONDENTS:
----

1. **SYAM SHARMA,S/O.SREEDHARAN,UNIVERSITY CAMPUS QUARTERS D 21,KARIYAVATTOM P.O, THIRUVANANTHAPURAM.**

2. **M.K.BIJI,W/O.SYAM SHARMA, -DO-**

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.9117/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE WRITTEN STATEMENT BY WAY OF COUNTER CLAIM FILED BY THE DEFENDANTS IN OS. NO.50/06 DT. 11.7.06.

EXT.P2:- COPY OF THE AFFIDAVIT FILED BY THE 2ND DEFENDANT IN OS. 50/06 DT. 8.12.06.

EXT.P3:- COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST PLAINTIFF DT. 22.1.07.

EXT.P4:- COPY OF THE ORDER DT. 6.2.07 IN IA. NO.10482 /06 IN OS. NO.50/06.

/TRUE COPY/

P.A. TO JUDGE

tss

M.N. KRISHNAN , J

==========

W.P.(C) NO. 9118 OF 2007

==========

Dated this the 16th day of August, 2007.

JUDGMENT

This writ petition is preferred against the order of First Additional Munsiff, Thiruvananthapuram in I.A. No. 10482/2006 in O.S. No. 50/2006. The defendants are the applicants before the court below for the appointment of a commissioner to have a local inspection. The case of the plaintiff is to the effect that the defendants are attempting to trespass into the property and therefore an injunction has to be granted against them. The defendants in their written statement would contend that themselves and their predecessors in interest has been using the pathway which is the disputed one for a period of more than 20 years as of right continuously, uninterruptedly and peacefully and therefore they are entitled to get the right of prescription of easement and as well as by easement of necessity. They have also filed a counter claim to the effect that they are entitled to such declaration as prayed for . So the defence in the suit had crystallised in to the form of the establishment of a right of easement by prescription over the property. It is a rudimentary principle that easement right can be claimed only over another man's property and the court by declaring that right puts a limitation to the use of the

property by the original owner of the property. So what is to be decided in the suit is only with respect to the claim of easement raised by the defendants and it will be answered also in the counter claim. So the parties are at issue only on this point and the question whether the plaintiff is having something more than the property covered by the documents etc. are extraneous to the consideration when the defence is that of easement by prescription or easement by necessity. The court below found that the issuance of a commission is not necessary to find out other points which is foreign to the consideration of the dispute in the suit. I find no illegality or irregularity committed by the court below which requires interference at the hands of this Court and therefore, the writ petition is dismissed.

M.N. KRISHNAN, JUDGE.

rv